

Petition to Revoke, Modify or Suspend
Berwick Iron & Metal Recycling's
Air Emission License A-001041-71-A-N (SM)

206

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March 11, 2011

VIA ELECTRONIC AND FIRST CLASS MAIL

Susan Lessard, Chair
Board of Environmental Protection
17 State House Station
Augusta, Maine 04333-0017

Re: Petition to Revoke, Modify, or Suspend Air License A-1041-71-A-N Issued to Berwick Iron & Metal Recycling, Inc.

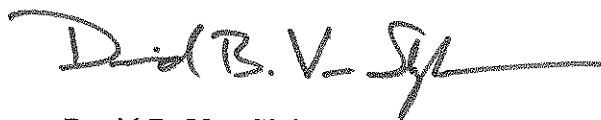
Berwick Citizens' Motion to Stay Appeal of Air License A-1041-71-A-N Issued to Berwick Iron & Metal Recycling, Inc.

Dear Chair Lessard:

I have attached a petition filed pursuant to 06-096 CMR 2 § 27 on behalf of Jeanette and Doug Seivwright, Robert and Donna Duffy, Tom and Carol Planche, Joyce and Raymond Provencher (collectively "Berwick Residents") to revoke, modify, or suspend air emission license A-001041-71-A-N (SM) ("Air License") issued to Berwick Iron & Metal Recycling, Inc. ("BI&MR") on October 27, 2010 ("Petition").

I have also attached a motion filed on behalf of Berwick Residents to stay the proceedings with regard to their appeal of BI&MR's Air License. In particular, such motion requests that, in the interest of resource economy for the Board, the Department and the parties, the hearing currently scheduled for March 17, 2011 be stayed pending the outcome of proceedings regarding the Petition.

Very truly yours,



David B. Van Slyke
Jeffrey D. Talbert
Nancy W. McBrady
Counsel for Berwick Residents

Enclosures (2)
cc: Service List

**STATE OF MAINE
BOARD OF ENVIRONMENTAL PROTECTION**

BERWICK IRON & METAL RECYCLING INC..)
YORK COUNTY)
BERWICK, MAINE)
PERMIT A-1041-71-A-N (SM))
)

**Berwick Residents' Petition to Revoke, Modify or Suspend
Air License A-1041-71-A-N Issued To Berwick Iron & Metal Recycling, Inc.**

Jeanette and Doug Seivwright, Robert and Donna Duffy, Tom and Carol Planche, Joyce and Raymond Provencher (collectively "Berwick Residents") hereby petition the Board of Environmental Protection (the "BEP" or "Board") pursuant to 06-096 CMR 2 § 27 to revoke, modify, or suspend license A-001041-71-A-N (SM) ("Air License") issued to Berwick Iron & Metal Recycling, Inc. ("BI&MR") on October 27, 2010.

In particular, Berwick Residents request revocation, modification, or suspension of the Air License pursuant to 06-096 CMR 2 § 27 based upon the following criteria:

- (1) The licensee has violated any law administered by the Department (06-096 CMR 2 § 27(G));
- (2) BI&MR obtained its Air License by misrepresenting or failing to disclose fully all relevant facts (06-096 CMR 2 § 27(B)); and/or
- (3) There has been a change in any condition or circumstance that requires revocation, suspension or a temporary or permanent modification of the terms of the license (06-096 CMR 2 § 27(F)).

Factual Basis for the Petition

BI&MR has built an automobile shredding facility at 106 Route 236 in Berwick, Maine. Berwick Residents live adjacent to or close to this new operation. Berwick Residents have sufficient factual evidence (discussed below) to support revoking, modifying, or suspending the Air License.

I. The Licensee Has Violated Laws Administered by the Department (Chapter 2 § 27(G)).

A. BI&MR Has Violated Air Laws Administered By The Department.

Legal Requirement:

Pursuant to Chapter 115(1)(B) of the Department's regulations:

Any person who emits, will emit, or causes to be emitted regulated pollutants from any existing or new source may not begin actual construction, operate, maintain, or modify the new or existing source without an air emission license from the Department.

06-096 CMR 115 § 1(B)(emphasis added); *see also* 38 M.R.S. § 590(1) (requiring any source within a region with air established air quality standards to obtain an air license).

Chapter 115(4) similarly states that:

[i]f an applicant is applying for a Major or Minor Modification or a new major or minor source license, the license must be issued by the Department prior to beginning actual construction of the modification or the new source."

06-096 CMR 115 § 4 (emphasis added).

Evidence of Violation

BI&MR began and completed construction of its new auto shredding operation, including air emissions units, before it obtained the Air License on October 27, 2010. BI&MR's new operation utilizes a shredder and a diesel-powered former locomotive engine. These two units emit regulated pollutants such as Nitrogen Oxide ("NOx"), Sulfur Dioxide ("SO₂"), Carbon Monoxide ("CO"), Particulate Matter ("PM"), and Volatile Organic Compounds ("VOCs").

In BI&MR's response to Berwick Residents' Appeal of Air License, BI&MR admitted that, "[i]n this case, BI&MR did install the shredder prior to issuance of the License . . ."

BI&MR Response to Berwick resident's Appeal at 6 (emphasis added).

Although BI&MR has already admitted this violation, Berwick Residents will offer the following evidence on this issue:¹

¹ Berwick Residents note that Section 27 of Chapter 2 merely requires that a petitioner "describe the factual basis for the petition, including what evidence will be offered." The rule does not appear to require a petitioner to attach

- (1) BI&MR's Response to Berwick resident's Appeal (admitting the violation)(Attached as Exhibit A);
- (2) BI&MR's Application for a Solid Waste Processing Facility License² (stating that 82% of the facility had been built in September of 2010)(Attached as Exhibit B);
- (3) Article from fosters.com dated February 18, 2011 (reporting that "[t]he diesel-powered engine and shredder have been on the site since last summer")(Attached as Exhibit C);
- (4) BI&MR's July 27, 2010 Application for Air License (showing emission units and pollutants emitted)(Attached as Exhibit D);
- (5) BI&MR's August 2010 Amendment to its Application for Air License (showing emission units and pollutants emitted)(Attached as Exhibit E); and
- (5) BI&MR's Air License (showing that it was not issued until October 27, 2010)(Attached as Exhibit F).

B. BI&MR Has Violated Solid Waste Laws Administered By The Department.

Legal Requirement:

Maine's solid waste statute, the Maine Hazardous, Septage and Solid Waste Management Act, states:

No person may locate, establish, construct, expand the disposal capacity of or operate any solid waste facility **unless** approved by the department under the provisions of this chapter.

See 38 M.R.S. § 1310-N.

all evidence. Nevertheless, Berwick Residents have attached the documents referenced but reserve the right to supply additional evidence to support the factual basis of its Petition.

² In September of 2010, as part of its Solid Waste Processing Facility Application BI&MR submitted a statement regarding its financial capacity to undertake the project, stating that "[a]s noted in the table [which includes the shredder and diesel locomotive engine] the applicant has already purchased and/or completed approximately 82% of the total work/estimated cost." See Application for a Solid Waste Processing Facility License at 7-1.

Evidence of Violation

BI&MR located, established, and constructed its processing facility before obtaining its Solid Waste Processing Facility License. BI&MR's facility is complete or almost complete, and BI&MR still does not have a Solid Waste Processing License.

To prove this violation Berwick Residents will offer:

- (1) Aerial photographs showing the facility at various stages of construction and in its current state;³ and
- (2) BI&MR's Application for a Solid Waste Processing Facility License (stating that 82% of the facility had been built in September of 2010) (Attached as Exhibit B).

C. BI&MR Has Violated Chapter 2 Requirements Administered by The Department.

Legal Requirement:

The Chapter 2 Section (10)(B) of the Department's Rules requires the following:

A pre-application meeting is required prior to submission to or acceptance by the Department of an application for the following:

. . . (7) Projects requiring new or amended licenses involving more than two bureaus.

An applicant with an application that requires a pre-application meeting pursuant to this section **shall** hold a public informational meeting in accordance with section 13 of this rule **prior** to filing the application.

See 06-096 CMR 2 § 10(B)(emphasis added).

Chapter 2 Section (13) of the Department's Rules contains the requirements for public informational meetings and states:

An applicant intending to file an application that requires a pre-application meeting pursuant to section 10(B) of this rule must hold a public informational meeting **prior** to filing that application. . . .[with its application]

The applicant must submit a signed certification attesting that a public informational meeting was noticed and held in accordance with this section.

See 06-096 CMR 2 § 13(emphasis added).

³ These oversized aerial photographs will be provided either upon request or at a hearing before the Board.

Evidence of Violation

BI&MR's project requires a license from at least two bureaus, the Bureau of Air Quality Control and the Bureau of Remediation and Waste Management. Nevertheless, BI&MR did not hold a public informational meeting as required by Section 10(B) of the Chapter 2 Rules.

BI&MR did not submit a signed certification with either its Solid Waste Processing Facility License Application or its Air License Application attesting that a public informational meeting was noticed and held in accordance with the Department's rules.

To prove this violation Berwick Residents will offer:

- (1) A copy of BI&MR's Solid Waste Processing Facility License Application (showing no public informational meeting certification)(Attached as Exhibit B); and
- (2) A copy of BI&MR's July 27, 2010 Air License Application (showing no public informational meeting certification.) (Attached as Exhibit D).

II. BI&MR Violated Another Air Law Administered by the Department, Obtained its Air License by Misrepresenting or Failing to Disclose Fully All Relevant Facts, And/Or There Has been a Change in Circumstance.

Legal Requirement:

Maine's Air Regulations also contain the following requirement:

Once a source requires an air emission license, all emissions units which emit regulated pollutants at the source **must** be included on the license. . .

06-096 CMR 115 § 1(B)(emphasis added); *see also* 06-096 CMR 115 § 4(B) (citing §3(E) which requires a license applicant to include "[a] list of **all** emission units that are subject to licensing . . ." §3(E)(1)(a))(emphasis added).

Evidence of Violation

BI&MR did not include all emissions units that emit regulated pollutants at the source. On July 27, 2010, the Department received an application from BI&MR for an air license associated with its metal shedding operation. BI&MR's Air License application only included two potential emissions units. The first unit is a 1967 Diesel Drive locomotive engine with a fuel

rated input of 200 gallons per hour. The second unit is a metal shredder (Texas Shredder Model 8104) with a throughput capacity of 50-100 tons per hour. The Air License application did not request a license for any other emissions units.

In August of 2010, BI&MR amended its Air License application but did not include any additional emissions units. On October 27, 2010, the Department issued BI&MR the Air License. The Air License does not reference any other potential emission units besides the diesel drive locomotive engine and the metal shredder.

On Thursday, March 3, 2011, BI&MR submitted a Spill Prevention, Control, and Countermeasure ("SPCC") Plan to the Berwick Planning Board as part of the local permitting process. BI&MR's SPCC plan states that its facility will utilize a free-standing separate diesel generator with an associated 900 gallon diesel fuel tank. *See* SPCC Plan at 1-3. That diesel generator is variously referred to as a "generator" and a "standby generator" in that document and in a revised Site Plan also issued by the Licensee on Thursday, March 3, 2011.

That emission unit was not included in BI&MR's Air License application materials nor is it a licensed emissions unit in the final license issued by the Department. Moreover, no information regarding this generator unit has yet been provided to the Air Bureau.

BI&MR provides very little information in the SPCC Plan regarding this generator aside from stating that the "diesel generator located adjacent to the shredder engine building has its own self-contained 920 gallon double walled fuel tank." *See* SPCC Plan at 2-1. The Site facility maps in Appendix C of the SPCC Plan now contain a depiction of the generator next to the shredder building. This generator was not listed on previous plans or submissions.⁴

⁴ While Berwick Residents do not know the generating capacity or emissions associated with this unit, based upon the limited information provided to date, Berwick Residents note that the 900 gallon diesel fuel tank associated with this unit is 1.5 times the capacity of the fuel tank supporting the diesel locomotive engine powering the shredder.

Although the purpose, type, and size of this generator, among other things, is unclear, the fact that this generator has a large diesel fuel tank associated with it shows that this unit has the potential to emit regulated pollutants. Therefore, this unit should have been included in BI&MR's Air License application and Air License.

BI&MR's failure to obtain a license for this unit before it was constructed is also a violation of 06-096 CMR 115 § 1(B) and 4 (discussed above) which requires that a permit be issued before such an emissions unit is constructed.

BI&MR also obtained its Air License by misrepresenting or failing to disclose fully all relevant facts, and/or there has been a change in circumstance that warrants revoking, suspending, or modifying the Air License.

To prove this violation Berwick Residents will offer:

- (1) BI&MR's SPCC plan dated January 2011 (but submitted to the parties on March 3) (referencing this generator)(Attached as Exhibit G);
- (2) Site facility plans, including the plans in Appendix C of the SPCC Plan (referencing the generator emissions unit)(Attached as Exhibit H);⁵
- (3) BI&MR's September 2010 Application for a Solid Waste Processing Facility License (which makes no reference to this emissions unit)(Attached as Exhibit B);
- (4) BI&MR's July 27, 2010 Application for Air License (showing emission units and pollutants emitted)(Attached as Exhibit D);
- (5) BI&MR's August 2010 Amendment to its Application for Air License (Attached as Exhibit E);
- (6) BI&MR's Air License (containing no description of this unit)(Attached as Exhibit F); and
- (7) Aerial photographs showing the facility at various stages of construction and its current state.⁶

⁵ Other plans, including oversized plans, will be provided either upon request or at a hearing before the Board

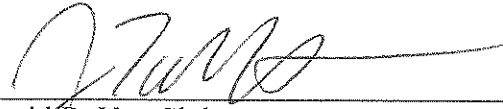
⁶ These oversized aerial photographs will be provided either upon request or at a hearing before the Board.

CONCLUSION

In conclusion, pursuant to 06-096 CMR 2 § 27, the Berwick Residents respectfully request that the Board revoke, modify, or suspend BI&MR's Air License because: (1) the licensee has violated laws administered by the Department (06-096 CMR 2 § 27(G)); (2) BI&MR obtained its Air License by misrepresenting or failing to disclose fully all relevant facts (06-096 CMR 2 § 27(B)); and/or (3) there has been a change in conditions or circumstances that requires revocation, suspension or a temporary or permanent modification of the terms of the license (06-096 CMR 2 § 27(F)).

DATED: March 11, 2011.

Respectfully submitted,



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